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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,053	09/25/2006	Akihiko Nishio	L9289.06205	6081
52989 7590 10/13/2010				
Dickinson Wright PLLC				
James E. Ledbetter, Esq.				
International Square				
1875 Eye Street, N.W., Suite 1200				
Washington, DC 20006				
EXAMINER				
GHOWRWAL, OMAR J				
ART UNIT		PAPER NUMBER		
2463				
MAIL DATE		DELIVERY MODE		
10/13/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/594,053	<b>Applicant(s)</b> NISHIO, AKIHIKO
<b>Examiner</b> OMAR GHOWRWAL	<b>Art Unit</b> 2463

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-12.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Derrick W Ferris/  
Supervisory Patent Examiner, Art Unit 2463

Continuation of 3. NOTE: Claims 1, 14 have been amended such that scope of the claims have changed (changing from "a" to "the" changes the scope from introducing a new element to referring back to a previous element). Regarding claim 8, Applicant argues that Kamel does not teach whether or not the channel quality of one channel is to be transmitted, in accordance with the channel quality of the other channel because Kamel teaches that a mobile station independently transmits power control commands of two different channels (Remarks, page 11). The Examiner respectfully disagrees. As is apparent from the cited section of Kamel, col. 15, lines 25-37, the channels that the control commands occur over are two control channels, not one data channel and one control channel. The independent commands pertain to power up and power down commands. There is nothing in the citation to suggest that one control channel pertains to a data channel and the other control channel pertains to the earlier mentioned control channel, as the Applicant appears to assert. Rather, the citation clearly shows that a power up command or a power down command occurs over each of these two control channels, respectfully, and that these commands depend upon both data channel and control channel quality. In other words, both data and control channel quality are measured (1<sup>st</sup> and 2<sup>nd</sup> limitations), and based on this, a power up or power down command is generated based on both measurements (encompassing the measured channel quality of the data channel--3<sup>rd</sup> limitation), and is transmitted based on both measurements (encompassing the measured channel quality of the control channel--4<sup>th</sup> limitation) hence meeting the claim limitations in question.

Continuation of 11. does NOT place the application in condition for allowance because: Claims 1, 14 have been amended such that scope of the claims have changed (changing from "a" to "the" changes the scope from introducing a new element to referring back to a previous element). Regarding claim 8, Applicant argues that Kamel does not teach whether or not the channel quality of one channel is to be transmitted, in accordance with the channel quality of the other channel because Kamel teaches that a mobile station independently transmits power control commands of two different channels (Remarks, page 11). The Examiner respectfully disagrees. As is apparent from the cited section of Kamel, col. 15, lines 25-37, the channels that the control commands occur over are two control channels, not one data channel and one control channel. The independent commands pertain to power up and power down commands. There is nothing in the citation to suggest that one control channel pertains to a data channel and the other control channel pertains to the earlier mentioned control channel, as the Applicant appears to assert. Rather, the citation clearly shows that a power up command or a power down command occurs over each of these two control channels, respectfully, and that these commands depend upon both data channel and control channel quality. In other words, both data and control channel quality are measured (1<sup>st</sup> and 2<sup>nd</sup> limitations), and based on this, a power up or power down command is generated based on both measurements (encompassing the measured channel quality of the data channel--3<sup>rd</sup> limitation), and is transmitted based on both measurements (encompassing the measured channel quality of the control channel--4<sup>th</sup> limitation) hence meeting the claim limitations in question.